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# ENVIRONMENTAL PROTECTION AGENCY

Mary A. Gade, Director

2200 Churchill Road, Springfield, IL 62794-9276

December 15, 1993

Mr. Brad Bradley  
USEPA-HSRL-6J  
77 W. Jackson  
Chicago, IL 60604

Re: Taracorp/NL Industries  
1190400007 -- Madison Co.  
Superfund/Tech

Dear Brad,

Following are the comments pertaining to the review of the Explanation of Significant Difference to allow non-hazardous waste generated from the residential yard cleanups to be disposed off-site rather than incorporated into the existing waste pile as required by the Record of Decision (ROD).

1. Top of Page 3. Taracorp Incorporated, not "Industries" purchased the property from NL in 1979. Taracorp Industries is the current owner as of 1986. See the enclosed correspondence for clarification.
2. Page 5. Paragraph 1. Last sentence. Replace "worst sites" with "worst residential locations."
3. Page 6. Second paragraph in the Description of the Significant Difference Section. Insert may "need to" be recycled and/or disposed of off-site.

If you have any questions please call at 217/782-6760.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian Culnan".

Brian Culnan, Remedial Project Manager  
Federal Site Management Unit  
Remedial Project Management Section  
Bureau of Land

**Taracorp**  
Industries

February 28, 1986

Mr. Mark A. Haney, Manager  
Facilities Compliance Unit  
Compliance Monitoring Section  
Illinois Environmental Protection Agency  
Division of Land Pollution Control  
2200 Churchill Road  
Springfield, Illinois 62706

Reference: 1190400007 - Madison County  
Granite City/Taracorp Industries  
ILD096731468

RECEIVED  
FEB 03 1986  
ILL. E.P.A. - D.L.P.C.  
STATE OF ILLINOIS

Dear Mr. Haney:

We are writing in response to the Agency's February 13, 1986 Compliance Inquiry Letter.

The Agency's letter outlined two (2) areas of apparent non-compliance, liability coverage (pursuant to 35 Ill. Adm. Code 725.245), and inadequate financial assurance documentation for facility closure (pursuant to 35 Ill. Adm. Code 725.243).

The Agency's Mr. Gary King was contacted to clarify Item #1 (Financial Assurance for Closure) of Attachment A as a Closure Trust Fund Mechanism was submitted to the Agency in September 1985 with an initial payment of \$1,500.

- . In the teleconference held on February 20, 1986, Mr. King described the apparent areas of non-compliance as follows:

- 1) Inadequate Financial Assurance Documentation for facility closure (pursuant to 35 Ill. Adm. Code 725.243), as described below:
  - a) Does not address the on-site large "waste pile".
  - b) Inadequate funding into the facility's Trust Fund. Mr. King said there should be payments into the Trust Fund for the prior years of 1982, 1983, and 1984.

In regard to the lack of liability coverage for the facility we have attempted on several occasions to obtain liability coverage through our Insurance Carrier, American Mutual Liability Insurance Co. (AMLI).

**Hoyt**  
PLANT

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*Grull 3/4/86*  
*KM*

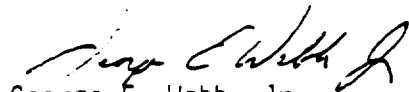
Feb. 23, 1986

As the Partial Closure was completed using Taracorp's own resources and operations did not begin in the newly constructed above-ground chemical waste tank until after an initial payment was made in the Trust Fund, we believe that payments for the prior years of 1982, 1983 and 1984 are not required and that we have adequately addressed the Closure Financial Assurance Requirements for the facility.

We believe this response adequately addresses the concerns set forth in the Compliance Inquiry Letter of February 13, 1986.

If there should be any questions, please feel free to call me at 618/451-4400.

Sincerely



George E. Webb, Jr.  
Director, Environmental Control & Safety

GEW/rc

cc: Illinois Environmental Protection Agency  
Division of Land Pollution Control  
2009 Mall Street  
Collinsville, Ill. 62234.

Certified Mail

## AGREEMENT

The following sets forth the terms and conditions of the Agreement by and among Taracorp, Inc. ("Debtor") and the Illinois Environmental Protection Agency ("IEPA") and NL Industries, Inc. ("NL"). It is agreed that:

(1) The parties hereto are desirous of effecting a means for allocating costs and responsibility with respect to certain environmental claims by IEPA and others against Debtor and NL, all relating to facilities sold by NL to Debtor pursuant to Agreement dated August 22, 1979. NL has agreed with all parties hereto to assume certain responsibilities regarding the investigative and remedial costs relating to these matters and Debtor has agreed to provide consideration to or for the benefit of IEPA and NL in conjunction therewith.

(2) Prior to the Effective Date, as defined in the Debtor's Plan of Reorganization, the Debtor shall set up and adequately capitalize a separate subsidiary corporation ("the New Corporation"), and all assets relating to the Granite City facility shall be spun off into the New Corporation which shall assume exclusive responsibility and be solely liable for all of the Debtor's liability for payment of all investigative and remedial clean-up costs relating to contamination located at, on, or near the Debtor's Granite City, Illinois Facility, and for compliance with all applicable environmental laws, regulations, and existing judicial decrees relating to the Granite City, Illinois Facility.

For purposes of this Agreement, the New Corporation shall be deemed adequately capitalized if it contains: (a) all of the assets relating to the Granite City Facility, and (b) financing, for the benefit of the New

intended to include a determination of whether ground water contamination related to and arising out of Debtor's Granite City facility exists; if so, whether remediation of such contamination is necessary; and, if so, what kind of remediation is necessary. It is contemplated that the payment of the \$500,000.00 includes the Debtor's and the New Corporation's share of responsibility for the RI/FS contemplated by this Agreement and discussed in Paragraph 3 above. It is further acknowledged by all parties, subject to paragraph 9 herein, that any claim by the IEPA against any party or any other person or entity with respect to liability for remediation of any ground water contamination is not determined in this Agreement, is not discharged by the entry of the order of confirmation of Debtor's Plan of Reorganization, and is not covered within the scope of the covenants not to sue set forth in Paragraphs 13 and 16, provided, however, that any liability of the Debtor for ground water contamination shall be, upon confirmation of Debtor's Plan of Reorganization, assumed by and shall become the exclusive responsibility of the New Corporation.

(6) (a) The liability of the Debtor and the New Corporation shall be satisfied as follows: (i) on the Effective Date of the Debtor's Plan, Debtor shall pay \$150,000.00 in cash into a fund maintained for the purpose of financing the investigative and remedial costs (the "Environmental Fund"); (ii) commencing on the first day of the first month after the Effective Date of the Plan, and continuing until the liability is satisfied, the New Corporation or its successors and assigns shall pay \$7,500.00 per month into the Environmental Fund; and (iii) the fund shall be maintained and disbursed under the direction and control of the IEPA pursuant to Paragraph 6(b) below, or in such manner as the IEPA and NL shall agree in writing.

Within thirty (30) days of IEPA's approval of the completed clean-up, which approval will not unreasonably be withheld, IEPA will pay the balance of the Environmental Fund to NL, provided that NL has made payments in toto equal to or greater than the total principal paid into and interest earned by the Environmental Fund. In the event that NL has incurred costs or expenditures less than the total principal paid into and interest earned by the Environmental Fund, IEPA will pay to NL an amount which, when added to the previous payments from the Environmental Fund to NL, equals NL's total payments. Should the previous payments from the Environmental Fund to NL exceed the payments made by NL, NL will refund the excess to the Environmental Fund. Any balance remaining after such payment will be paid to the State of Illinois Hazardous Waste Fund.

(iii) NL agrees to pay to the State of Illinois Hazardous Waste Fund the sum of Sixty Thousand Dollars (\$60,000.00), not as a penalty nor as reimbursement for costs incurred by Illinois, other than costs incurred by Illinois prosecuting a claim in the Chapter 11 case of Debtor, to be paid as follows: (a) the sum of Thirty Thousand Dollars (\$30,000.00) within thirty (30) days of the Effective Date of the Debtor's Plan and (b) the sum of Thirty Thousand Dollars (\$30,000.00) one (1) year after the Effective Date of the Debtor's Plan.

(7) NL hereby agrees to assume the following obligations and responsibilities relative to environmental problems at the Granite City Facility:

(a) NL shall bear the responsibility for the conduct of the RI/FS and a subsequent remedial clean-up, as determined by the RI/FS process, of the contamination located at, on or near the Granite City Facility, including

operations of the Granite City Facility and from the waste pile up to the date of the approval by IEPA of the remedial clean-up performed by NL.

- (ii) On-site surface conditions of a housekeeping nature relating to ongoing operations at the Granite City Facility except NL shall retain responsibility for any such on-site matters relating to the existing waste pile;
- (iii) Conditions caused by subsequent operations of the Granite City Facility after the Effective Date of this Agreement, except as contemplated in Paragraph (7)(c)(i) above.
- (iv) Penalties assessed or asserted by any governmental entity relating to future action or inaction by Debtor or the New Corporation, except for failure to carry out responsibilities exclusively assumed by NL.

(d) NL agrees to indemnify the Debtor, New Corporation and their officers, directors, stockholders and employees and hold them harmless against all obligations, responsibilities, liabilities, damages, costs and expenses relating to claims, actions or assessments of any federal governmental entity with respect to alleged environmental hazards located at, on or near the Granite City Facility, with the express exception of those obligations which remain the Debtor's or the New Corporation's under this Agreement. This indemnity is intended to afford Debtor, New Corporation and their officers, directors, stockholders and employees the same relief and no more as would have been afforded by a covenant not to sue executed on behalf of the United States Environmental Protection Agency, and shall cease to be operative if such a covenant is obtained. Nothing herein shall obligate Debtor to obtain such a covenant. With regard to claims against Debtor which are discharged by the confirmation of Debtor's Plan of Reorganization or otherwise, NL shall



restrictions of record which may have occurred since August 22, 1979. NL agrees to bear sole responsibility for any such liens, claims or assessments so long as said assets are conveyed to NL by Debtor not later than May 1, 1985. If conveyance is effected after May 1, 1985, then responsibility for the period subsequent to January 1, 1985, shall be prorated between the Debtor and NL. NL acknowledges that such Facility has been listed on the National Priorities List (the "Superfund" or "NPL") and that such listing may not have been removed as of the Effective Date of Debtor's Plan of Reorganization.

- (c) Upon conveyance of the assets described in Paragraph 8(a) and 8(b) above, NL shall bear the responsibility for all investigative and remedial clean-up costs associated with said Facility and shall indemnify Debtor for all obligations, responsibilities and liabilities, costs and expenses asserted against it related to environmental hazards associated with said Facility, excluding, however, any costs and expenses relating to (i) damages claimed or incurred by private parties arising out of air emissions which may have occurred as a result of Debtor's operation of such Facility after August 22, 1979, (ii) actions arising from activities of Debtor at said Facility which activities were unrelated to the regular conduct of the business at the St. Louis Park Facility. With regard to claims against Debtor which are discharged by the confirmation of Debtor's Plan of Reorganization or otherwise, NL shall have no different or greater liability than Debtor, and NL and Debtor or the New Corporation shall be obliged to cooperate in the defense of such allegedly discharged claim.

Notwithstanding the foregoing and the provisions of the Agreement between NL and the Debtor dated August 22, 1979, NL and the Debtor expressly agree that to the extent NL may have a claim against Debtor for indemnification by Debtor for any claims that have been or may be asserted against NL for ground water contamination resulting from the existence of the waste pile, such claim for indemnification shall be brought against only the New Corporation.

(10) Debtor agrees that it will cause the New Corporation, in good faith, to accommodate efforts undertaken or contracted by NL to recycle wastes associated with the waste pile at the Granite City Facility and shall utilize in its normal business operations, where commercially feasible, products reclaimed from the pile. It is understood and agreed that the price at which the New Corporation shall purchase the reclaimed materials usable in its operations shall be such as to enable the New Corporation to maintain no more than and no less than its normal trading margins. It is further understood the New Corporation will not be required to incur capital expenditures to utilize such materials.

(11) It is understood by the parties that no agreement has been reached with respect to liability or responsibility for actual or potential environmental problems at the McCook Facility, as that term is defined in Debtor's Plan of Reorganization; and nothing contained herein shall be deemed to constitute evidence of a waiver of a claim or defense or establish the liability of either party for any environmental problem at the McCook Facility.

(13) Upon Debtor's payment and performance of its obligations provided herein, which payment and performance is contemplated to be fulfilled on or before the Effective Date of the Debtor's Plan, the IEPA will provide to Debtor a covenant not to sue with regard to environmental contamination arising out of and relating to the Debtor's Granite City Facility, and provided that Debtor shall not cause or permit any further material environmental violations at, on, or near the Debtor's Granite City Facility between the date of this Agreement and the Effective Date of the completion of payment and performance of Debtor's obligations provided herein, whichever is later.

(14) It is acknowledged and agreed that this Agreement sets forth the total liability of the Debtor and the New Corporation for the investigative and remedial obligations provided for herein, except (a) with respect to possible ground water contamination and (b) for compliance with all applicable environmental laws, regulations, and existing judicial decrees relating to current and future operations at the Granite City Facility, which after the effective date shall be the liability of the New Corporation and not of Debtor.

(15) With regard to the Granite City, Illinois Facility, upon confirmation of the Debtor's Plan, an appropriate Consent Order incorporating the terms of this Agreement shall be entered with respect to the Debtor, the New Corporation formed, NL and the IEPA in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, which Consent Order shall provide that the Debtor, the New Corporation, and NL consent to the jurisdiction, venue and enforcement of the Consent Order and this Agreement in the United States District Court for the Southern District of Illinois, and that they will not object to or contest such jurisdiction or venue nor assert that said Consent Order or Agreement must be enforced in the Bankruptcy Court

by the provisions of this Agreement so long as the terms of this Agreement are complied with, which compliance shall be determined in the sole reasonable discretion of the IEPA.

(17) The proposal does not apply, and is not intended to apply to or resolve, in whole or in part, any remedial clean-up costs relating to the current and future operations of the Debtor or the New Corporation at its Granite City, Illinois facility except as specified in Paragraph (7)(c)(i). It is the specific intention of the parties that all other environmental problems and compliances relating to or arising out of or in connection with Debtor's or the New Corporation's current or future operating facilities at Granite City shall be dealt with on their own merits, without prejudice by this Agreement, including, but not limited to, existing or pending permits and operations.

(18) If an order confirming the Debtor's Plan of Reorganization does not become final by the earlier of ninety (90) days from the date of the entry of such order or July 1, 1985, then the IEPA, or NL, at their sole option, may terminate and withdraw their acceptance of this Agreement and of the Debtor's Plan upon written notice to Debtor and the other parties hereto of the exercise of such option and thereafter may exercise any and all rights which they may have.

(19) The terms and conditions of this agreement shall be binding upon each of the respective parties, their successors and assigns and shall inure to the benefit of the parties, their successors or assigns.

(20) To the extent this Agreement is deemed inconsistent with any prior agreements and understandings as between NL and Debtor, whether oral or in writing, the provisions of this Agreement shall govern.

Illinois Attorney General  
Environmental Division  
Deputy Chief  
Attorney General  
500 South Second St.  
Springfield, IL 62706

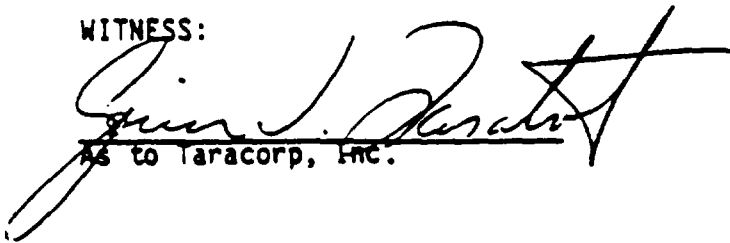
Taracorp, Inc.  
1401 Paces Ferry Rd., N.W.  
Atlanta, Georgia 30327

Illinois Environmental Protection Agency  
Manager, Land Pollution Control Division  
2200 Churchill Road  
Springfield, Illinois 62706

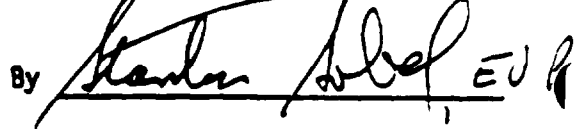
NL Industries, Inc.  
1230 Avenue of the Americas  
New York, New York 10020  
Attention: Corporate Secretary

This 4<sup>th</sup> day of March, 1985.

WITNESS:

  
As to Taracorp, Inc.

TARACORP, INC.

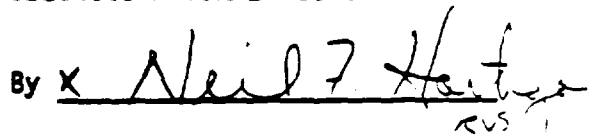
By  EVB

  
As to Illinois Environmental  
Protection Agency

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

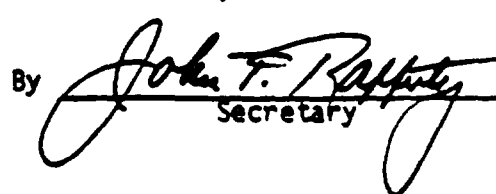
By 

ILLINOIS ATTORNEY GENERAL

By X  RVS

  
As to NL Industries, Inc.

NL INDUSTRIES, INC.

By   
Secretary

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